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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

HARBOUR ISLAND  
CONDOMINIUM OWNERS  
ASSOCIATION, INC.,

Plaintiff and Respondent,

v.

SUSAN ALEXANDER,

Defendant and Appellant.

2d Civil No. B285755  
(Super. Ct. No. 56-2015-  
00474418-CU-MC-VTA)  
(Ventura County)

Respondent Harbour Island Condominium Homeowners Association (COA) requested a preliminary injunction against appellant Susan Alexander seeking to mitigate noise; keep her dogs out of common areas in which pets are not allowed, and abstain from photographing the COA president at the community

swimming pool.<sup>1</sup> We conclude that the trial court did not abuse its discretion in issuing the injunction. We affirm.

### **FACTS**

In 2015, COA sued appellant, her partner Jason Mavropoulos, and their landlord John Griffiths.<sup>2</sup> COA alleged that appellant and Mavropoulos stalk, harass and intimidate COA members, and create noise disturbances. In 2017, COA requested a preliminary injunction. It argued it is likely to prevail on its claims because appellant's conduct violates a provision forbidding nuisances in the Covenants, Conditions and Restrictions (CC&R's), and she will suffer no harm from complying with COA governing documents.

Mavropoulos accused COA of harassment because it cited him and appellant for rule violations, and of conspiring against them by having meetings they were not allowed to attend. However, the COA president explained that tenants such as appellant and Mavropoulos are not allowed to participate in meetings, which are limited to COA members with a vested ownership interest.

#### *Evidence of Noise Disturbances*

As stated in our prior opinion, an upstairs neighbor "testified about 'thumping' and door slamming noise emanating from appellant's apartment. The noise was 'excessive.'"

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<sup>1</sup> Subsequent to the filing of the instant action appellant filed a related case seeking a restraining order against Barbra Conway, a downstairs neighbor who was, purportedly, stalking appellant. We affirmed the denial of Alexander's request. (*Alexander v. Conway* (June 28, 2018, B284070) [nonpub. opn.] )

<sup>2</sup> Mavropoulos and Griffiths are not participating in this appeal. Appellant is self-represented.

Downstairs neighbor Conway “described ‘stomping all the time . . . and slamming of the door constantly’ since appellant and Mavropoulos moved into the upstairs unit in 2014. After [Conway] and her now-deceased husband complained to COA, the noise became ‘purposeful,’ as if to provoke [Conway]. There were lulls—for example when the parties attended a mandatory settlement conference—then the noise would start up again. The noise incidents continued into 2017.” (*Alexander v. Conway, supra*, B284070.)

While appellant’s request for a restraining order was pending, Conway noticed that “it was very, very quiet upstairs.” But after the court ruled against appellant, the heavy walking and slamming resumed, which indicates to Conway that appellant and Mavropoulos “are very aware of what they are doing.”

Griffiths testified that COA did not ask him to install noise dampening measures such as throw rugs, door bumpers or a pneumatic door closer. He is aware of the noise complaints and is willing to undertake mitigation measures if noise is a problem for neighbors.

Appellant denied making excessive noise by stomping or slamming doors. After litigation began, she and Mavropoulos placed additional throw rugs in their unit and “small, felt pads” on the door jambs. Nevertheless, the neighbors probably hear the front door closing. The COA manager did not visit their unit to investigate noise mitigation efforts appellant made.

#### *Evidence of Pet Violations*

COA members testified that appellant takes her dogs to urinate in common areas posted “no dogs.” This occurred even after COA filed suit against appellant. One member stated, “I

saw Jason [Mavropoulos] lead his dog up onto the grass near the clubhouse to have the dog urinate on the grass clearly in defiance of the rules and regulations of Harbour Island.” This occurred in front of signs showing that dogs are not allowed. Mavropoulos, who was cited for the incident, is unaware of a COA rule prohibiting dogs from urinating in specified common areas.

#### *Evidence of Photographing a Neighbor*

COA Board President Devra Hodge testified that in April 2017 appellant used a camera while Hodge relaxed at the pool, then hid behind a pillar when Hodge looked at her. Hodge stated that appellant “photographed me before on a couple of other occasions” and described aggressive behavior by appellant after COA filed suit, which seemed to be an effort to intimidate COA members. Hodge was frightened by appellant’s conduct.

Appellant stated “[f]ilming is a good thing to do” if people are following her. She filmed Hodge “to have proof evidence for court” but denied doing so while hiding behind a pillar. Appellant and Mavropoulos took a video camera to the pool and clubhouse to document “loud” and “raucous” parties.

#### **The Trial Court’s Ruling**

The court granted a preliminary injunction against appellant and Mavropoulos. It requires them to (1) place throw rugs on all walking areas in their bedroom and office; (2) install a pneumatic mechanism on their front door; (3) install door bumpers or pads approved by COA; (4) cease recording or photographing Hodge in the pool area; and (5) cease allowing their dogs to urinate and defecate in COA common areas marked “no pets allowed.”

In a statement of decision, the court wrote that COA proved it is likely to prevail at trial with “credible convincing testimony”

that appellant and Mavropoulos cause loud and unreasonable noise; engage in invasive conduct toward Hodge; and allow their dogs to soil “no pets” areas. The balance of harm favors COA, whose members are being oppressed, and the corrective measures required of appellant and Mavropoulos are minimal.

## **DISCUSSION**

### *1. Appeal and Review*

The order granting a preliminary injunction is appealable. (Code Civ. Proc., § 904.1, subd. (a)(6); *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 110.) It is reviewed under an abuse of discretion standard to determine if the court evaluated (1) the likelihood that plaintiff will prevail on the merits at trial and (2) the interim harm that the plaintiff is likely to sustain if the injunction is denied versus the harm the defendant is likely to suffer if the injunction issues. (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1109.)

Factual findings are evaluated under a substantial evidence standard. (*People ex rel. Reisig v. Acuna* (2017) 9 Cal.App.5th 1, 22.) Accordingly, “we do not reweigh the evidence or evaluate the credibility of witnesses,” and we “interpret the facts in the light most favorable to the prevailing party,” indulging all reasonable inferences in support of the order. (*Ryland Mews Homeowners Assn. v. Munoz* (2015) 234 Cal.App.4th 705, 712.)

### *2. Legal Basis For the Injunction*

Appellant contends there is no legal basis for an injunction because COA did not introduce into evidence its CC&R’s. To preserve an issue for appeal, appellant must (1) raise the objection below, to bring the court’s attention to the error so that it might be corrected, and (2) cite the record showing exactly

where the objection was made. (*Oiye v. Fox* (2012) 211 Cal.App.4th 1036, 1065.) Appellant did not object at the hearing that the court lacked a legal basis for its ruling. As a result, she forfeited the claim.

Appellant does not deny that the CC&R's are an exhibit to COA's complaint. She did not designate the complaint for inclusion in the clerk's transcript. In keeping with the policy favoring the validity of the court's order, we presume that the court relied on the CC&R's attached to the complaint, despite appellant's failure to provide us with an adequate record. (*Lerno v. Obergfell* (1956) 144 Cal.App.2d 221, 223-224.)

CC&R's are recorded. (Civ. Code, §§ 4200, 4250.) A court may take notice of the "existence and facial contents" of recorded documents. (*Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 924, fn. 1; Evid. Code, § 452, subds. (c), (h). See also, *Rubio v. U.S. Bank N.A.* (N.D. Cal. Apr. 1, 2014) 2014 U.S.Dist.Lexis 45677, \*13-14 [court can fully consider facts contained in publicly-recorded documents incorporated into the complaint].) COA has standing to enforce its governing documents, which provide a legal basis for the court's ruling. (Civ. Code, § 5980.)

### *3. There Is Substantial Evidence of Pet Nuisances*

Appellant contends that the CC&R's do not address dogs. COA's request for an injunction quotes a CC&R provision stating that residents cannot disturb the neighborhood or occupants of adjoining property, or create a nuisance. The nuisance restriction is broad enough to allow COA to exclude dogs from specified common areas for health and safety reasons. (Civ. Code, § 5975, subd. (a) [CC&R's are enforceable unless unreasonable].) Courts are not inclined to question the wisdom of

a restriction unless it violates public policy. (*Nahrstedt v. Lakeside Village Condominium Assn.* (1994) 8 Cal.4th 361, 381-382, 386 [prohibition on pets is rationally related to health, sanitation and noise concerns in a high-density condominium project].) As recorded documents, the CC&R's give those affected by them sufficient notice that the provisions will be enforced as equitable servitudes. (*Id.* at pp. 379-380.)

Though appellant claims that the order is unsupported by facts, eyewitnesses testified that she and Mavropoulos let their dogs relieve themselves near the clubhouse, defying posted signs forbidding pets at that location. Appellant argues that the issue is moot because she and Mavropoulos now keep their dogs away from "no pets allowed" areas. We cannot say the issue is moot, in light of evidence that the nuisance continued after this lawsuit was filed. In any event, appellant will not suffer a hardship from continuing to comply with the COA pet rules.

#### 4. *Excessive Noise Nuisances*

Appellant asserts that COA did not adequately investigate neighbors' allegations of excessive noise. She does not cite a CC&R provision requiring that an investigation be undertaken. COA president Hodge testified that no physical investigation is conducted unless the board suspects an architectural violation; Hodge did not believe that the floor in appellant's unit requires investigation. No evidence was presented at the hearing that the floor was improperly installed. Further, slamming doors to annoy neighbors is an incivility problem, not an architectural problem.

COA is entitled to seek an injunction to stop acoustic nuisances that interfere with neighbors' quiet enjoyment; the request may be supported by testimony from affected

homeowners that the noise is “intolerable.” (*Ryland Mews Homeowners Assn. v. Munoz, supra*, 234 Cal.App.4th at pp. 707-708 [defendant installed a hardwood floor that caused sound transfer to the downstairs neighbor].) A court directive that the noise be mitigated with the use of throw rugs is not an abuse of discretion. (*Id.* at p. 713.) The nuisance may be enjoined. (Code Civ. Proc., § 731.)

Two homeowners testified that appellant makes excessive thumping, stomping and door slamming noise. The trial court credited those witnesses; it disbelieved appellant’s and Mavropoulos’s denials of noise-making activity. We must accept the court’s credibility evaluation.

Despite appellant’s claims of having mitigated the noise problem with throw rugs and “small felt pads,” the noise continued. The problem was not “moot,” as appellant argues in her brief. Accordingly, the court ordered the installation of a pneumatic door closer, COA-approved door bumpers or pads, and throw rugs in two rooms. The mitigation measures ordered are a minimal hardship. The court did not abuse its discretion by ordering these easily achieved measures.

### 5. *Due Process*

Appellant argues that she was unfairly denied an opportunity to challenge violation notices and fines imposed by COA; however, board president Hodge explained that only COA members with a vested ownership interest have the right to participate in COA meetings. As a tenant, appellant cannot participate. Appellant next asserts that the unit owner, Griffiths, was allowed to address the board of directors, but “[t]he board never spoke back.” Appellant does not have standing to assert

the rights of her landlord with respect to his appeal before the board of directors

Appellant contends that her due process rights were violated when the court admitted evidence of Mavropoulos's purported criminal record during closing argument. Appellant does not cite a record page showing the admission of such evidence, nor did the court mention a criminal record in its statement of decision. There are no grounds for concluding that the court considered the belated evidence, let alone based its decision on it.

#### **DISPOSITION**

The judgment (order granting preliminary injunction) is affirmed. Respondent is entitled to recover its costs on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Kevin DeNoce, Judge  
Superior Court County of Ventura

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Susan Alexander, in pro per for Defendant and Appellant.  
Kulik Gottesman Siegel & Ware, Leonard Siegel and  
Patricia Brum for Plaintiff and Respondent.